

THESE THINGS

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,

CR# 16J-CV-0002

Plaintiff,

JUDGE'S COPY

U.S. District Judge

vs.

Magistrate Judge Smyser

FILED

HARRISBURG

JUN 08 2001

MARY E. D'ANDREA, CLERK

Per                       
DEPUTY CLERKKENNETH D. KYLER, et al.,  
Defendants.

MOTION FOR ORDER OF COURT REQUIRING SCI  
GREENE PRISON OFFICIALS TO RETURN TO  
THIS PLAINTIFF <sup>ALL</sup> HIS LEGAL MATERIALS, <sup>ALL</sup>  
CASE FILES AND LAW BOOKS AND TO PROVIDE  
HIM WITH ENOUGH PAPER, CARBON PAPER AND  
ENVELOPES TO ENABLE HIM TO MEET COURT  
DEADLINE, INTER ALIA PETITION FOR WRIT OF  
MANDAMUS AND BRIEF IN SUPPORT

Comes now, the Plaintiff & its Counsel for  
above-entitled Civil Action, John Richard Jae, as a layman unlike  
in the Arts & Sciences of the Laws & Legal Procedures with in the  
States & now files his Motion for Order of Court Requiring SCI-GE  
Prison officials to Return to This Plaintiff All His Legal  
Materials, Court Case Files And Law Books And to Provide Him  
Enough Paper, Carbon Paper And Envelopes to Enable Him  
Meet Court Deadline, Inter Alia Petition For Writ of Mar  
And Brief In Support, hereto, & who, avers, deposes & swears & s.

I. The Motion

1. On or About October 17, 2000, Defendants  
Counsel, filed their Motion For Summary Judgment.  
Statement of Undisputed Facts, hereto in this case.

2. on or about December 5, 2000, Defendants, by counsel, filed their Documents Supporting and Memorandum in Support of Motion For Summary Judgment, herewith.

3. After receiving and (1) enlargement of time to file Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Support and his supporting documents are presently due to be filed, herein, on or before June 18, 2000.

4. Plaintiff Jae now moves this Court for Order Requiring SCI-Greene Prison Officials To Return To This Plaintiff All His Legal Materials, Court Case Files And Law Books And To Provide Him With Enough Paper, Carbon Paper and Envelopes To Enable Him To Meet Court Deadline, Inter Alia Petition For Writ Of Mandamus herewith this case, based upon the following facts, arguments & citations of authorities, below & in  
II. Brief In Support

Plaintiff John Richard Jae, avers & submits that he has upcoming court dates for Briefs In Opposition To Be Filed with this Court, herein this case, on or before June 18, 2001, and in Jae vs. Lester, 1:00-0041, on June 23, 2001, and his Petition for Writ Of Certiorari in the U.S. Supreme Court on or before June 23, 2001, in his State Criminal Court case, where he is challenging the legality of his conviction and confinement, however, he is unable to meet all three of these Court Deadlines, due to the fact that SCI-Greene Prison Officials here are illegally withholding his legal materials, court case files & Law Books.

from him out in the SMU Property Room and are refuse to allow him to have sufficient enough time to go thru such property boxes, locate & retrieve & take back his <sup>cell</sup> with him, all of the legal materials, court case files and law books of his, which he needs in order to enable him to prepare & file his court pleadings in the aforementioned three court cases, and comply with the afore-mentioned court-deadlines, herein, supra, at 2. Additionally, SCI-Greene Prison Officials here are misquoting Prison Regs and illegally denying this Plaintiff, who is a Indigent State Prisoner, sufficient enough for & Carbon which he needs to prepare his aforementioned Court Pleadings in order to file such. Furthermore, Prison Officials here at SCI-Greene are illegally refusing to provide this ~~Prisoner~~ Plaintiff with <sup>the</sup> envelopes which he needs to mail his aforementioned pleadings to the courts, as such Pleadings are too thick for regular size envelopes such as the ones Prison Officials provide this Plaintiff with ten (10) or at the beginning of each month he

When Prison Officials refuse to allow this Plaintiff to have all of his legal materials in his Prison cell with him & store such ~~in~~ at are a outside of his control such violates the case's integrity and at a bare minimum the should, by law, allow him sufficient access time to go thru his Property Boxes in the SMU



Born to locate, retrieve & take back to his cell with the legal materials, court case files/papers & his law book which he needs to enable him to prepare his court case pleadings when he has a deadline to meet, and anything less would be & is, a denial of access to the courts & this is a Green Prison officials have failed to do here.

On May 30, 2001, Plaintiff Jare sent an immediate request form to MR. Mark Capozza, the SCT Greene SMU Unit Manager, and advised MR. Capozza, of his need for the aforementioned court case pleading files & legal papers from his stored property boxes in the SMU property room here, of the aforementioned court case deadlines & of the facts that he has not been given sufficient enough time to search through his stored property boxes here for his needed court case files/papers & law book which he needed to make & meet such aforementioned court case deadlines & he requested therein that MR. Capozza make arrangements to put in <sup>stored</sup> my property boxes in the <sup>SMU</sup> Law Library with me the next time I go to the law library here or that he grant him hours to go thru my stored property to find it. MR. Capozza, on May 31, 2001, replied back to my writing on such request to him & denied such and refused to do so & denied me access to such in violation of the 1st Amendment, U.S. Constitution & Article I, § 20 of Pennsylvania State Constitution.

Additionally, from May 2, 2000, - May 9, 2001, smvun  
 Manager Capozza illegally denied this Plaintiff total access  
 to his legal materials, Court Case Files/Papers & Law Books, from  
 Capozza illegally refused to allow this Plaintiff to possess  
 any of his legal materials, Court Case Files/Papers, Law Books  
 Correspondence materials (i.e., Paper, Carbon Paper, Envelopes) &  
 thereby illegally causing this Plaintiff to miss the ~~deadline~~ ~~of~~ ~~the~~  
 Deadline of May 10, 2001, for his Petition for Reconsideration  
 of U.S. District Judge's ~~by~~ ~~order~~ in this here case, which  
 otherwise would have filed in this case, if MR. Capozza had not  
 denied him such items, as a bare ~~fact~~ ~~and~~ thus causing Plaintiff  
 suffer an actual injury & a denial of his First Amendment, U.S. Const.  
 & Article I, § 20, Pa. State Constitutional Rights of access to the courts.

On May 6, 2001, Plaintiff wrote & sent a letter to SA  
 Superintendent Conner Blaine Jr., and a letter to ~~SA~~ ~~Greg~~  
 Superintendent Fin Centralized Services Paul J. Stawitzky & but  
 above-referenced denials of MR. Capozza's (among other things) &  
 that I was going to miss my filing deadline of May 10, 2001.

Superintendent Blaine refused to do anything about such &  
 Stawitzky violated polroya but responding to correspondence from  
 and failed to even show the common courtesy due & responding back to this  
 on such correspondence, as sent to him on May 6, 2001.

Additionally, the SA - Greene Librarians have failed to supply  
 this Plaintiff with enough paper and carbon paper to prepare his  
 legal pleadings in this & the other two above-mentioned cases & he  
 to provide this Plaintiff with any large legal size envelopes at a  
 needs to mail such pleadings out to the ~~and~~ the U.S. Supreme Court  
 this Plaintiff is totally indigent and he has no money at all to buy such  
 thus they too, have illegally denied this Plaintiff his afore-mentioned  
 Constitutional Rights to access to the courts & both Superintendent  
 & Deputy Stawitzky are aware of this & yet have failed to do anything.

Thus, given the above & foregoing facts, it should be clear to every  
 man & most certainly to this court, that this Plaintiff already  
 & will be again in the near future, denied his State & Federal Cases  
 Rights of access to the courts unless the Court intervenes  
 the relief requested herein this Pleading.

In Bonds v. Smith, 430 U.S. 817, 97 S.Ct. 491, 52 L.Ed.  
 2d 100, the U.S. Supreme Court held, that the Constitution requires  
 the filing of



legal papers with the courts. See Bundy, 430 U.S. at 82, 975 Ct. at 1498.

In Peterson v. Jeffes, 855 F.2d 1021 (8th Cir. 1988), our Ninth Circuit U.S. Court of Appeals reasoned that

An actual injury necessarily occurs by virtue of a prison's failure to provide the level of assistance required under Bundy.

and by failing to allow this Plaintiff to have sufficient access and to go through his stored legal property boxes to locate, retrieve and back to his cell with him, his necessary legal materials, Court files & papers & his own personal soft cover law books and by totally denying him access to possession of his legal and court materials, court case files/papers & personal law books at all here 5-22-01 - 5-24-01 causing him to miss a deadline for his Petition for Habeas Corpus, herein this case, and by denying him enough paper and carbon to prepare his afore-mentioned pleading and a large legal envelopes at all to mail such pleading to this U.S. Supreme Court, SCI-Griffin officials have violated their duty, under the U.S. Constitution to assist this inmate-plaintiff the preparation and filing of meaningful legal papers with the courts they must do under Bundy, 430 U.S. at 82 & 975 Ct. at 1498 and Plaintiff has already suffered actual injury as a direct result thereof such & he will suffer actual injury again in the near future as a direct result thereof such, unless this Court intervenes here this Plaintiff the relief which he seeks & requests herein this

Furthermore, this Plaintiff avers & argues that, Seizure order of a prisoner's legal papers may also violate the Constitution. See Carline, 957 F.2d 353, 354 (7th Cir. 1992); Roman v. Jeffes, 904 F.2d 1 (8th Cir. 1990); Morello v. James, 910 F.2d 344, 347 (2d Cir. 1991); Simmons v. Wright, 804 F.2d 182, 183-85 (1st Cir. 1986); Wright v. Newcome, 795 F.2d 464, 465 (8th Cir. 1986); Patterson v. McIntosh, 773 F.2d 284, 288 (6th Cir. 1985); Ryan v. Wood, 643, 644 (8th Cir. 1979); Wills v. ICC Comm. Htee, 812 F.Supp. 1029 (N.D. Cal. 1992); Gallipeau v. Beard, 734 F.Supp. 4853 (D.R.I. 1990); Bail Scully, 606 F.Supp. 126, 133-34 (S.D. N.Y. 1985); Stiringer v. Thompson, 606 F.Supp. 133, 137 (N.D. Ill. 1982); Sire v. Border Kincher, 526 F.Supp. 1265 (N.D. W. Va. 1981) and in Carter v. Hutto, 781 F.2d 1028 (4th Cir. 1985) U.S. Court of Appeals for the Fourth Circuit, stated & held:

He has asserted that prison officials confiscated and destroyed his legal materials some of which were

430 U.S. 317, 521, 97 S.Ct. 1491, 1494, 52 L.Ed.2d 72 (1977) (State's failure to provide legal research facilities denies inmates access to the courts in violation of the fourth amendment). Hudspeth v. Figgins, 534 F.2d at 1347-48 (allegation that correctional authorities threatened prisoner with physical harm to deter him from seeking judicial relief states cognizable claim under §1983). Oxendine v. Williams, 509 F.2d 1405, 1407 (11th Cir. 1975) (confiscation of legal materials from prisoners constitutes unreasonable interference with access to courts). Were Carter to succeed in proving these allegations, his entitlement to some remedy would be beyond dispute. (Carter, 781 F.2d at 1032).

Furthermore, in Tyler v. "Ron" Deputy Sheriff, 574 F.2d 427, 429 (5th Cir. 1978), the U.S. Court of Appeals for the Eighth Circuit stated & held: The taking of a prisoner's legal papers states a claim under 42 U.S.C. § 1983 or 1985 if the taking results in interference with or infringement of the prisoner's constitutional right of access to the courts. Stogard v. Brown, 418 F.2d 105 (7th Cir. 1969). (Tyler, 574 F.2d at 429).

Furthermore, in Patterson v. McIntee, 717 F.2d 284 (1983), the U.S. Court of Appeals for the Sixth Circuit stated:

As has been recently summarized:

"Persons in prison, like other individuals, have the right to petition the Government for redress of grievances which, of course, includes 'access of prisoners to the courts for the purpose of presenting their complaints.'" Cruz v. Beto, 405 U.S. 319, 325 S.Ct. 1079, 1081, 31 L.Ed.2d 266 (1972), quoting Johnson v. Avery, 393 U.S. 483, 485, 89 S.Ct. 747, 748, 21 L.Ed.2d 718 (1969).

Milhouse v. Carleton, 652 F.2d 371, 373 (3d Cir. 1981). Prison officials are charged with the responsibility of assuring that inmate access to the courts is "adequate, effective and meaningful." Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1164, 1171, 52 L.Ed.2d 324 (1977). See also, Burys v. Ohio, 361 U.S. 243, 249, 80 S.Ct. 1145, 1148, 4 L.Ed.2d 1331 (1961). A prisoner's First Amendment guarantees must be "freely exercisable without hindrance." Milhouse, supra, 652 F.2d at 374, referring to Farrington v. Morgan, 618 F.2d 222, 229-30 (1st Cir. 1980); Garland v. Bailey, 594 F.2d 1320, 1322-23 (8th Cir. 1979); Hudspeth v. Figgins, 534 F.2d 1345, 1347 (4th Cir. 1975); Cent. Int'l v. U.S. G.B., 99 S.Ct. 2013, 60 L.Ed.2d 336 (1979). (Patterson, 717 F.2d at 285).

See also Hiney v. Wilson, 520 F.2d 589, 591 (2d Cir. 1975) and Binder v. ..., 517 F.2d 1311, 1320 (7th Cir. 1975).

Furthermore, Plaintiff avers & submits that, prison officials can compromise his legal research, scientific or otherwise. Holding papers and documents and interfering with the cases integrity. ...



The American Correctional Association (ACA) stand and ~~§§ 3-4~~ (access to the courts) grants, " . . . the right of access to the courts minimally provides that prisoners have the right to present or receive, including the following: challenging the legality of the conviction or confinement; seeking redress for ill-treatment and/or treatment while under correctional control; pursuing relief in connection with civil legal problems; and asserting constitutional or other government civil rights or other right protected by constitutional, statutory provisions or common law. Inmates seeking judicial relief are not subjected to reprisals or penalties because of the decision to seek relief. "

Court access entails the picture through the First Amendment when officials deny the ability to have the material necessary to comprehend the transcript, evidence and reports of events in connection with conviction. Transcripts and evidence are not generated, but sent to each conviction. Errors in the case may not appear in the next issue, prison officials cannot deny an inmate his legal scientific or otherwise, when the inmate is already charged for "telling the books" through the courts.

Finally, in Bounds, supra, 97 S. Ct. at 1496, the Supreme Court

Moreover, our decisions have consistently required States to shoulder affirmative obligations to assure all prisoners meaning access to the courts. It is indisputable that indigent inmates must be provided at State expense with paper and pen to draft legal documents with notarial services to authenticate them, and with stamps to mail them.

For purposes of this pleading only, Plaintiff joins as to this action, pursuant to Fed. R. Cr. P. Rule 19(a), ~~Conner~~ Sgt-Greene, Superintendent, and Mark Capozza, Sgt-Greene's Manager.

This Court has jurisdiction to grant the relief which Plaintiff seeks by/in this Motion, pursuant to 28 U.S.C.

Also, U.S. District Judge Sylvia H. Rambo, of this Court, granted the relief which this Plaintiff seeks in the ~~motion~~ by Enker and ens. dated October 6, 2000, in the US



(10) HEREFOR, based upon the foregoing facts, arguments & citations of Authorities, herein, Plaintiff John Richard prays that this Court will enter an order, ordering SCI-6 Prison officials to return all of his Legal Materials, Case Files/Papers & his own personal law books to him forthwith, so that he can prepare and file his legal Plea in the cases referred to & listed, herein, supra, and that they provide him with enough Paper, Carbon Paper and envelopes so he can prepare, file & mail such pleadings out to the U.S. Supreme Court:

AND HE SHALL EVER PRA  
RESPECTFULLY SUBMITTED

(S) John Richard Doe  
MR. JOHN RICHARD DOE,  
#BQ-3219  
SCI-Greene/SMU  
175 Progress Drive  
Waynesburg, PA-15370-808  
Plaintiff and Pro Se Counsel

with JUNE 2001: